

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0022**

Withholding and Sales Tax

Responsible Officer

For the Tax Periods 1999 and December, 2001-December, 2002

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ISSUES

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, withholding tax, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit sales taxes during the tax period 1999 and December, 2001 through December, 2002. The taxpayer protested the assessment of tax and penalty. A telephone hearing was held and this Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The sales tax assessment for the period ending December 31, 1999 resulted from the department’s audit of the corporation. The audit deficiency resulted from sales taxes that were not collected but did not have the proper exemption certificates and use tax deficiencies. The use taxes were not held by the corporation in trust for the state. Therefore, the taxpayer is not personally responsible for the payment of the use taxes.

The sales taxes that were not collected, however, are considered trust taxes. As president during the audit period, the taxpayer is responsible for the payment of these taxes.

The taxpayer provided significant documentation evidencing that he resigned his position with the corporation in October, 2001 and sold his interest in the corporation in November, 2001. Since the taxpayer was not an employee, officer, or member of the corporation from December, 2001 through December, 2002, the taxpayer cannot be held personally responsible for the withholding trust taxes that the corporation did not remit to the state.

Finding

The taxpayer’s protest is sustained in part and denied in part.